

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MICHAEL PHINNEY)	
Claimant)	
VS.)	
)	
HARDING GLASS)	Docket No. 213,241
Respondent)	
AND)	
)	
LEGION INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier requested review of the preliminary hearing Order dated October 17, 1996, entered by Administrative Law Judge Floyd V. Palmer.

ISSUES

The Administrative Law Judge awarded claimant medical benefits. Respondent and its insurance carrier asked the Appeals Board to review the following issues:

- (1) Whether claimant sustained personal injury by accident arising out of and in the course of employment.
- (2) Whether this claim for a left knee injury had been previously settled in January 1996.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for purposes of preliminary hearing the Appeals Board finds as follows:

The preliminary hearing Order entered by the Administrative Law Judge should be affirmed.

(1) The Administrative Law Judge found that claimant injured his left knee over a period of time which ended on claimant's last day of work on April 5, 1996. The Appeals Board agrees with the Administrative Law Judge's analysis and adopts that finding.

Claimant testified he banged his left knee in December 1995 while kneeling down. Claimant initially experienced left knee swelling which resolved in a short period of time. Claimant did not seek medical treatment at the time of the incident, although treatment was offered, because he did not believe treatment was warranted. Instead, claimant continued to work for the respondent until April 5, 1996. Claimant testified that as he continued to work his left knee symptoms worsened. Claimant believes that in April 1996, before leaving respondent's employ, he and the respondent's branch manager, Ken Sanders, discussed going to a doctor and at that time Mr. Sanders gave him permission to consult a physician.

The Administrative Law Judge personally observed both claimant and respondent's Ken Sanders testify and, therefore, had the opportunity to assess claimant's demeanor and credibility. As indicated by the Judge's findings, the Administrative Law Judge believed claimant's statements regarding the worsening of his symptoms. In this instance, the Appeals Board gives some deference to the Administrative Law Judge's implicit finding of claimant's credibility.

The Appeals Board finds that claimant injured his left knee while working for the respondent and that April 5, 1996, is the appropriate date of accident for the period of injury in question.

(2) Respondent contends claimant settled his claim for left knee injury in an earlier settlement hearing held on January 17, 1996. At that hearing claimant settled a claim for a May 1992 elbow injury. As the settlement check was presented, respondent's attorney stated:

"Will you accept this check as full and final settlement of the settlement as approved by the special administrative law judge for any claims you may have against Harding Glass and Legion Insurance Company from the date of the accident of 5-1-92 up to and including today's date?"

Because of that language, respondent now contends claimant settled any and all claims he might now have for the left knee.

Due to the finding that claimant continued to sustain injury to his left knee through his last day of work on April 5, 1996, respondent's argument must fail because the accidental injury involving the left knee occurred after the January 1996 settlement. Therefore, the Appeals Board need not address the remaining merits of respondent's argument.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated October 17, 1996, entered by Administrative Law Judge Floyd V. Palmer should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December 1996.

BOARD MEMBER

c: Matthew S. Crowley, Topeka, KS
Roger D. Fincher, Topeka, KS
Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director